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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/501,716	02/10/2000	Kazuichi Ooe	1046.1209/JDH	4289

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
TSEGAYE, SABA	

ART UNIT	PAPER NUMBER
2619	

MAIL DATE	DELIVERY MODE
10/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/501,716	OOE, KAZUICHI	
	Examiner	Art Unit	
	Saba Tsegaye	2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,6 and 8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,6 and 8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *07/17/07 & 09/04/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office Action is in response the amendment filed 08/14/07. Claims 1, 2, 6 and 8 are pending. Currently no claims are in condition for allowance.

Claim Rejections - 35 USC § 103

2. Claims 1, 2, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds (US 5,742,499) in view of Furtney et al. (US 5,579,509).

Regarding claims 1, 2 and 6, Reynolds discloses a communications method of performing communications by switching over a plurality of communication modes (a method for selecting one communication mode from a plurality of communication modes), comprising:

measuring a communication performance between a plurality of communication devices (multi node computer system 10 comprised of a plurality of processors (also called CPU)) each comprising a CPU and a memory (processor's memory; see column 5, lines 25-27; column 8, lines 15-30) and being connected via a network (103) by measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions (a particular operation employing a selected communication mode within a multimode computer system; selecting an optimal communications mode at operation run-time. See abstract; column 5, lines 11-46);

obtaining a condition-based optimum communication mode in which the communication time in one of the communication modes of the one of the communication devices, exceeds a communication time of other communication mode per communication condition of the one of the communication devices (see fig 4; steps 409-411; column 8, lines 31-45);

selecting the condition-based optimum communication mode in accordance with the communication condition when in communications, and thus performing the communications between the communication devices based on the condition based optimum communication mode of the one of the communication devices (see fig 4; steps 409-416; column 8, lines 31-59).

Further, Reynolds discloses selecting a mode of communication from a plurality of modes of communication for performing **a plurality of operations** so as to optimize a performance characteristic of **a multi-node** computer system; and performing the particular operation within the **multi-node** computer system using the selected mode of communication. Each particular operation requires communication among the nodes. Reynolds does not expressly disclose a communications method that comprises a version of the operating system.

As known, difficulties arise when a transmitter to send a data packet to receivers using a different version of an operating system. It is also known that to perform compatibility checking, the transmitter and the receivers exchange their software numbers.

Furtney teaches a method and apparatus that verifies compatibility of a plurality of interacting software modules (column 3, lines 1-50).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a version identifier, such as that suggested by Furtney, in the system of Reynolds in order to provide an enhanced method and apparatus for verifying compatibility of a plurality of interacting system components (column 2, lines 10-12).

Regarding claim 8, Reynolds discloses a communications device further comprising;

a storage unit storing the condition-based optimum communication mode (column 8, lines 15-30),

wherein the performance measuring module measures the communication performance in the communications with other communications device if not stored with the condition-based optimum communication mode in the communications with the other communications device when performing the communications with the other communications device (column 8, line 15-33), and the optimum mode-obtaining module obtains the condition-based optimum communication mode (column 8, line 15-33).

Response to Arguments

3. Applicant's arguments with respect to claims 1, 2, 6, and 8 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the Examiner has not provided any evidence or prior art reference that performed compatibility checking at the time of Reynolds' invention. Examiner respectfully disagrees. It is a common knowledge that to ensure version compatibility between two communicating computer, interacting system or modules that are designed and assembled by different companies or that may have been acquired from the same company at a different time. Therefore, Examiner provided prior arts that support "a communications method that comprises a version of the operating system."

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. MacInnis (US 2003/0028899 A1) discloses multicast downloading of software and data modules and their compatibility requirements.

Metz et al. (US 5,666,293) discloses downloading operating system software through a broadcast channel.

Hildenbrand (US 5,878,246) discloses a system for linking an interposition module between two modules to provide compatibility as modules versions change.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saba Tsegaye whose telephone number is (571) 272-3091. The examiner can normally be reached on Monday-Friday (7:30-5:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Saba Tsegaye
Examiner
Art Unit 2619

ST
October 23, 2007

10/26/07

WING CHAN
SUPERVISORY PATENT EXAMINER